

1885

QUEEN-
EMPERESS
v.
DURGA
CHARAN.

“The Code of Criminal Procedure does not contain any section expressly authorizing a review of judgment in a criminal case after the judgment has been recorded. The Code of Criminal Procedure was passed after the Code of Civil Procedure. The latter contains a section expressly authorizing a review of judgment, but the former contains no corresponding section. From this it may reasonably be inferred that the Legislature did not intend to confer in criminal cases a power similar to that which they had given in civil cases.”

The Legislature has not, even under the Criminal Procedure Code now in force, conferred, in express words, upon a High Court, the power of reviewing its judgments in all criminal cases as it has done under the Civil Procedure Code in civil cases; and, in my opinion, the provisions of s. 369 of the Criminal Procedure Code, so far as they affect a High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and are subsequently disposed of under the provisions of s. 434 of the Criminal Procedure Code and the corresponding sections of Letters Patent, which, for the North-Western Provinces, are ss. 18 and 19.

Under these circumstances, I concur with the learned Chief Justice in rejecting the application.

Application refused.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

AJUDHIA (DEFENDANT) v. BALDEO SINGH (PLAINTIFF).^{*}

Pre-emption—Profits of property accruing between purchase and transfer to pre-emptor.

B purchased a share in a mahal on the 3rd January 1880 (Pus, 1287 fasli). *A* sued *B* and the vendor to enforce his right of pre-emption, and, on the 24th March 1882 (Chait, 1289 fasli), obtained a final decree enforcing the right. Subsequently *B*, as a co-sharer in the mahal, during 1288 fasli, claimed from *A*, as lambardar of the mahal, the profits of the share for 1288 fasli.

Held that the pre-emptive right which was declared in the suit instituted by *A*, when it was once established, existed, and must be presumed to have taken

^{*} Second appeal No. 935 of 1884, from a decree of W. Barry, Esq., District Judge of Banda, dated the 29th April, 1884, affirming a decree of Muhammad Fazal Azim, Assistant Collector, 1st class, of Hamirpur, dated the 21st February, 1884.

1885
April 23.

effect on the date when the subsequently awarded sale to *B* took place, and therefore there was no period of time during which *B* was properly in possession of the share and entitled to profits from *A* in his character of lambardar, but *A* must be presumed to have been in possession and entitled to the profits from the date of the sale to *B*.

1885

AJUDHIA
v.
BALDEO
SINGH.

THE plaintiff in this suit purchased a share in a mahál on the 3rd January, 1880, (Pús, 1287 fasli). The defendant sued him and the vendor to enforce the right of pre-emption, and, on the 24th March, 1882, (Chait, 1289 fasli), obtained a final decree enforcing the right. In this suit the plaintiff, as a co-sharer in the mahál, during 1288 fasli, claimed from the defendant, as lambardár of the mahál, the profits of the share for 1288 fasli. The Court of first instance dismissed the suit, holding that, as the defendant had obtained a decree enforcing his right of pre-emption in respect of the sale of the share to the plaintiff, he must be considered to have been in proprietary possession from the date of such sale, and not merely from the date of the final decree or the date he obtained possession thereunder, and therefore the plaintiff had no right to sue. The lower appellate Court, referring to *Baldeo Pershad v. Mohan* (1), reversed this decision, and remanded the case for trial on the merits. The Court of first instance accordingly tried the case on the merits, and gave the plaintiff a decree, which the lower appellate Court affirmed.

In second appeal, the defendant contended that the plaintiff was not entitled to the profits for 1288 fasli, and his suit was therefore not maintainable.

Babu *Baroda Prasad Ghose*, for the appellant.

Munshi *Hanuman Prasad* and Babu *Oprokash Chandar Mukerji*, for the respondent.

STRAIGHT, J.—I am of opinion that the appeal must prevail, and that the decision of the lower Courts must be reversed. It does not appear to me that the argument put forward in support of the plaintiff's claim will bear examination. The pre-emptive right which was declared in the suit instituted by the defendant against the plaintiff, when it was once established, existed, and must be presumed to have taken effect on the date when the subsequently awarded sale to the plaintiff took place, and therefore

(1) N.-W. P. H. C. Rep., 1866, R. C. A., p. 30.

1885

AJUDHIA
v.
BALDEO
SINGH.

there was no period of time during which the plaintiff was properly in possession of the share, and entitled to profits from the defendant in his character of lambardár. It seems to me that the defendant must be presumed to have been in possession and entitled to the profits from the date of the sale to the plaintiff. The appeal is therefore decreed, and the suit dismissed with costs.

TYRRELL, J., concurred.

Appeal allowed.

1885
April 28

Before Sir W. Comer Petheram, Kt., Chief Justice and Mr. Justice Brodhurst.

CHEDAMI LAL (JUDGMENT-DEBTOR) v. AMIR BEG (PURCHASER.)*

Execution of decree—Sale—Property sold before advertized time—Sale invalid.

A sale by public auction in execution of a decree, which is conducted at a time and place other than those properly notified, is not a sale at all within the meaning of the Civil Procedure Code.

The time to be notified for a sale by public auction in execution of a decree must be the time of the commencement of the sale, in order that all intending purchasers may be enabled to be present during the whole of the proceedings, and that all who are interested in the property sold may see that there is a fair competition and a good sale.

Where property which was advertized for sale by public auction in execution of a decree at 11 A. M. was sold at 7 A. M.,—*held* that the mistake was more than a mere irregularity in conducting the sale, and that the whole of the proceedings were invalid.

THIS was an appeal from an order refusing to set aside a sale of a house in execution of a decree. The judgment-debtor applied to have the sale set aside on the ground that the property had been advertized to be sold at 11 A. M., whereas it had been sold at 7 A. M., whereby the property was sold for much below its proper value. The Court executing the decree refused the application. The judgment-debtor appealed to the High Court.

Babu *Ratan Chand*, for the appellant.

Shah *Asad Ali*, for the respondent.

PETHERAM, C. J.—I think that this appeal must be allowed, and the sale set aside. It may be—I am not in a position to say whether it is so or not—that in this particular case no harm has been done. Whether that is so or not, this way of dealing with

* First Appeal No. 1 of 1885, from an order of Babu Baij Nath, Munsif of Agra, dated the 27th November, 1884.